IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 484 OF 2002

Abdul Hannan Abdulhai Kadri]
Age 45 years, Residing at]
Ashrafaia Masjid, 1st floor,]
Room No.1, Rashid Compound]
Kausa, Mumbra, Tal. & Dist.]
Thane, presently lodged in]
Kolhapur Jail]..Appellant
(Ori.Accused No.1)

versus

State of Maharashtra]
(through P.S.O. Mumbra Police]
Station)]..Respondents

Mr. K. N. Makasare for the Appellant / Original Accused No. 1.

Mrs. G. P. Mulekar, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
Smt. R. S. DALVI,JJ.

DATE : 24TH NOVEMBER, 2006

ORAL JUDGMENT (Per : D. G. Deshpande, J.) :

1. Heard Advocate for the Appellant / accused and learned APP for the Respondents -State.

2. This is an Appeal by the accused challenging his conviction under Section 302 and 201 of the

Indian Penal Code by which he is sentenced to imprisonment for life only under Section 302 of IPC in the judgment delivered by the Adhoc Additional District and Sessions Judge, Thane, on 16.3.2002.

3. The name of the victim is Raziya @ Raziv. She was engaged by the accused for doing the domestic work and accused used to teach her Kuran in the evening. According to the prosecution even though the accused was married, intimacy relationship was developed between the deceased Raziya and the accused. She became pregnant from the accused. The accused was promising that he would marry her but she found that he was avoiding to marry her. He killed her i.e. by strangulation and then cutting her entire body into pieces and then tried to dispose of or destroy the evidence. According to the prosecution, this incident of murder and destruction of evidence occurred sometime between 14.3.1999 to 18.3.1999 at Room No. 401, 4th floor, Milan Building, Rashid Compound, Kausa, Mumbra, Dist : Thane.

4. This is not a case where first missing complaint came to be lodged and then the body of

Raziya was discovered. The missing complaint was lodged by the mother of Raziya, Khajat Hussain Shaikh (P.W. 10). Missing complaint was lodged by her on 26.3.1999. But prior to that flesh and other parts of one human body were found by the police. There was no occasion for the prosecution to prove these facts by examining witnesses because as per Exhibit 16 notice was given to the accused to admit or deny documents mentioned as per Exhibit 16. They were documents from Sr. Nos. 1 to 10 and they were as under:

Arrest panchnama 26.03.99.

Inquest Panchnama 18.03.99.

Spot Panchnama 18.03.99.

Panchnama of flesh dt. 20.03.99.

Panchnama of clothes seized from the spot 26.03.99.

Inquest Panchnama 26.03.99.

Cause of death certificate 18.3.99.

Panchnama of yellow metal 27.03.99.

Panchnama of production of agreement 29.03.99.

Letters to C.A.

Accused admitted documents from Sr. Nos. 1 to 4, 7, 8 and 10. Enquest panchnama - Exhibit 18 is admitted by the accused as stated above and it shows that the information was given by one Kashinath Gotiram Chaudhari, residing at Kausa, Mumbra, that parts of human body were there in his field. Panchnama was accordingly prepared. Right hand of a human body with five fingers and nails intact broken from ankle, then the palm of the left hand with nails intact, one human left leg from below the knee with nails intact, then one human right leg below the knee nails intact and there is a block spot on the thumb, then four human bones and then human cage, the panchnama was prepared and these parts of the human body were seized and then sent to Civil Hospital.

5. At the same time and same place i.e. at the distance of 30 feet from where the human parts were found as above, certain clothes were recovered which include saree, peticoat, blouse, nicker, brassier and one old gunny bag. Panchnama was also made, these articles were seized and sealed. It is also admitted by the accused at Exhibit 19.

6. Thereafter, before the missing complaint was lodged on 26.3.1999, one Mohamed Ahmed Shaikh, Cleaner or sweeper and residing in Basera Building, at Rashid Compound, Kausa, Mumbra, told the police that there was a choke up of the drainage pipelines in Aziza Terrace Building, Flat Nos. 101, 201, 301 and 401. Residents made complaint in that regard and therefore when he was cleaning the drainage pipeline 2- 3 kgs. of flesh was found. Panchnama of this incident was prepared vide Exhibit 20 and the flesh was seized and sealed.

7. The aforesaid facts were necessary to be given at this stage because even though the FIR about missing of Raziya came to be filed on 26.3.1999, these recoveries made earlier are relied

upon by the prosecution to prove that all these bones and flesh was of the body of the Raziya.

8. FIR as stated above was lodged by P.W. 10 Khajat Hussain Shaikh. It is necessary to mention here that before lodging this FIR, the bones including hand and feet recovered by the police, as stated earlier, were shown to her and she identified that they were of her daughter Raziya from the black mark on the left foot thumb. She also identified the clothes of Raziya which were shown to her i.e. saree, peticoat, blouse and brassier.

9. It is in this background that FIR has been lodged at Exhibit 56 wherein it is alleged by P.W. 10 that it was the accused who in order to overcome the pressure exerted upon her by Raziya for entering into marriage with her, after she became pregnant from him that he killed her and destroyed her body.

10. After this FIR was lodged, then police machinery set into motion. The accused was arrested and then at his instance the spot of the offence was seen, panchnama was made. Spot was the house in possession of the accused i.e. room No. 401 from

where incriminating articles were seized. Then accused also led the police party to the drainage in the compound of the building from where head and portion of the waist of Raziya was recovered. Statement of witnesses came to be recorded. All these incriminating articles were sent to Chemical Analyser for opinion and after getting the C.A. report, the charge sheet was filed.

11. Prosecution in all examined 11 witnesses to prove its case. The defence of the accused was of total denial. The trial court came to the conclusion that the accused is guilty of the offences charged and accordingly the accused was convicted and hence this Appeal.

12. Mr. Makasare firstly contended that the charge framed by the trial court against the accused is a composite charge of both the offences under Section 302 and 201 and therefore it is defective charge-sheet. At the outset, it has to be stated that both the charges are separate and they are absolutely clear covering the ingredients of Section 302 and 201 and though they are covered in one paragraph they are separate and distinct charges and

no prejudice of any kind is caused to the accused on that count, therefore, this argument is required to be rejected.

13. Mr. Makasare then raised number of other contentions. Firstly, according to him, even though deceased Raziya was missing from 14.3.1999 missing complaint / report came to be lodged by her mother on 26.3.1999, therefore there was a delay of 12 days, for which according to him there was no plausible or satisfactory explanation. Secondly, according to him, there was no evidence that deceased Raziya had become pregnant from the accused. In the entire discovery of bones and flesh and the parts of body of Raziya no foetus was found. Thirdly, according to him there was no evidence to hold that Raziya was strangulated by the accused or strangulated before her death. Then according to him, there is no medical evidence to show that the injuries found on the body of Raziya (body whatever flesh and pieces were found separately) were anti-mortem, that even the prosecution has not been able to prove that the parts of the body were found in the field the flesh that was found and the body was human flesh or human parts or even they are of

Raziya or they are of the same person. In short, according to Mr. Makasare, there is no proof at all whatsoever that flesh and head and other parts were of Raziya, (hereinafter referred to as "the body of Raziya") and therefore according to him if that part of the prosecution case is not at all proved, the conviction of the accused was liable to be set aside.

14. Regarding story of the prosecution that Raziya was pregnant from the accused and which the prosecution has tried to prove through the evidence of P.W. 7 Hirabai Laxman Talwar, Mr. Makasare contended that there was no occasion or reason for Raziya to disclose to Hirabai that she was pregnant because Hirabai was neither from her village nor related to her nor was the close associate of deceased Raziya and therefore if this evidence goes away then there is nothing to show that deceased Raziya had ever complaint to anyone that she was pregnant from the accused. Mr. Makasare also contended that if mother of Raziya was living with Raziya then there was no reason for Raziya not to disclose such an important fact of becoming pregnant to her mother.

15. Further it was contended by Mr. Makasare that till this date the prosecution has not been able to give the cause of death of Raziya. Regarding identity of the body also according to him there was no evidence and the evidence of the prosecution about recoveries at the instance of the accused was also not trustworhty; that there were recoveries at the instance of the accused after one another and therefore that created serious doubt about the trustworthiness of the recovery.

16. Regarding report of the C.A also and the other evidence also, Mr. Makasare raised serious objections.

17. On the other hand, the learned APP contended that there was no delay on the part of P.W. 10 in lodging the missing report because at that time she was at her native place having gone there to attend Ramzan. Evidence of mother P.W. 10 is therefore most natural, she had made enquiries at different places and then after coming to Mumbra, she identified the body i.e. foot of the right leg where a black spot was there to be that of Raziya.

The learned APP also contended that it may be that doctors have not been able to positively assert that the parts of the body and flesh found at the different places were of the same person but considering the discovery of the head at the instance of the accused and discovery of other parts of the human body, there was nothing wrong to conclude that all those were parts of the body of Raziya.

18. Regarding the evidence of Hirabai, she contended that Hirabai had no reason to falsely implead the accused, she was residing with Raziya in the same room as stated by Hirabai herself and P.W. 10 mother of Raziya, and, therefore, it was natural for Raziya to disclose her about her being pregnant from the accused.

19. Learned APP contended that it may be no foetus was found anywhere, but considering the fact that Raziya at the date of her death was pregnant by two months or maximum three months, the foetus would be very small negligible portion which could have been destroyed by the accused in his own way without anybody knowing about the same. He contended that

there may not be an evidence of strangulation of Raziya by the accused but the spot panchnama of the house of the accused in room No. 401 proves that the murder of Raziya was committed in the house of the accused i.e. room No.401. She further contended that discovery of all the incriminating articles at the instance of the accused including the head of Raziya, weapon of assault, blood stained clothes, prove the case of the prosecution beyond doubt. She also contended that accused on the one hand was teaching kuran to Raziya and on the other hand she became pregnant from him, and, therefore, it was a strong motive for the accused to kill and eliminate Raziya and in order to save his skin and name the accused butchered her and severed all the parts of her body and destroyed them at different places, as stated above.

20. Learned APP also contended that all the evidence collected by the prosecution including the report of the C.A. conclusively prove the guilt of the accused and therefore no interference was called for in the judgment.

21. In view of these rival contentions, we have

to see whether the appeal is required to be allowed or dismissed. Before adverting to the various submissions made by both the sides, it is necessary to find out what is the evidence of discovery and seizure produced by the prosecution because that plays an important role.

22. P.W. 10 is the mother of Raziya, she has stated that she was residing in Mumbra two and half years before i.e. when the incident took place in Rashida Compound. Deceased Raziya was staying with her so also witness Hirabai. Raziya died three years back. She was doing labour of Bigari during day time and in the evening she used to go to the accused for doing domestic work and also learning Kuran. She also stated that Raziya was unmarried.

23. Then P.W. 10 has stated at that time she was at her native place when her step daughter Rasul told her personally that Raziya was missing and asked her to go to Mumbra. Witness thereafter contacted one Kasim on phone and he also confirmed that Raziya was missing. According to him, Raziya had gone to Lonavala, therefore P.W. 10 went to Lonavala to her sister but Raziya was not there.

Therefore, then she went to Kausa, Mumbra, there also she did not find any clues about missing Raziya then she contacted the accused who told her that Raziya was not coming for work for 15 days. Then this witness was advised to lodge the complaint.

24. P.W. 10 further stated that Raziya was living with Hirabai in Mumbra and Hirabai told her that Raziya was pregnant for two months, she was vomiting and she then complained as per Exhibit 56. She was taken to the hospital. The bones of the hand and legs were shown and she found that in the right side leg portion there was a black spot. It was on the finger of the right leg. Then she stated that after the accused was arrested, head was recovered from the drainage chamber. There were ornaments of nose seized which were given to her and then her statement was recorded at Exhibit 57.

25. In the cross examination she has stated that she lived in Karnataka i.e. her mulukh 11 days before Raziya disappeared but prior to that she was staying with Raziya. She also denied the suggestion that she left her daughter 10 months before her death because of differences. She denied the

suggestion that there was no identification mark on the finger of the leg portion shown to her, and also denied the suggestion that Hirabai did not told her anything about relationship and pregnancy of Raziya from accused.

26. Mr. Makasare, contended that so far as this witness is concerned that she has no personal knowledge about missing of Raziya and there is no explanation why Raziya if she was pregnant by about two months before her missing she did not tell this fact to her mother.

27. We do not find any force in the submissions. We do not know the state of mind of Raziya after she became pregnant. She might have found Hirabai more close in that regard than the mother. P.W. 10 is an illiterate lady and she has given most natural evidence, that is, the efforts to trace Raziya and then lodging report and before that identifying the body parts as that of Raziya.

28. There is no force in the contentions of Mr. Makasare, that there is delay in lodging the missing report. Admittedly, from the evidence of P.W. 10,

it is clear that she was not in Mumbra when Raziya was missing. She had gone to her native place at Karnataka 11 days before Raziya was missing and it took some time to come to know of missing of Raziya, then verifying the fact, going to Lonavala and coming to Mumbra and then lodging the missing report. There is therefore no delay in lodging the missing report and accused cannot get any advantage of the same.

29. Next evidence is of Hirabai - P.W. 7. This witness has stated that Raziya was from her village and they were living in one single room. Raziya was working as bigari labourer during day time and in the evening she used to do household work for the accused who is referred to as "Maulana" and then she used to learn Kuran from him and return in the night by 10.00 to 11.00 p.m.

30. Witness P.W. 7 Hirabai has stated that Raziya was pregnant by two months and this fact was told to her by Raziya and also that pregrancy was from accused Maulana. She stated that on one day when she came back Raziya was not there at 1.00 p.m. her sister searched her for 2-3 days. The mother

was living in the village, she came 4-5 days afterwards and lodged the complaint. She learnt about the murder.

31. In her cross examination, Hirabai admitted that Raziya was not her relative. Their language was different from Raziya. She was Hindu whereas Raziya was Muslim.

32. At this juncture, it is also necessary to consider the evidence of Jafarnissa P.W. 4. She is residing in Rashid Building, near mosque. According to her accused was Pesh Imam of the Mosque, she was knowing him as he was living near the mosque. She was also knowing deceased Raziya who was killed. According to her Raziya was residing in Aziza Terrace along with Hirabai. She was a casual labourer and was earning by doing domestic work in a house including that of the accused. She has also stated that she was on visiting terms with Raziya and about one and half month before her death Raziya told her that she was pregnant by the accused and that the accused was going to marry her after two months. She stated that on one day she saw people collected on the rear side of Aziza Terrace where

Raziya was residing, that was after the death of Raziya. Police and Municipal persons were there. The Municipal employees searched the gutter and from one of the gutters one head of the dead body and from other gutter a waist portion and hair of dead body were found. She saw the head portion and identified that it was of Raziya.

33. Both these witnesses Hirabai and Jafarnissa have stated that Raziya told them about she being pregnant from the accused and that the accused has promised to marry her . Evidence of both these witnesses was criticised by the accused on the ground that both are not related to Raziya and so far as Jafarnissa P.W. 4 is concerned, she was from Madras and Raziya was not from her village and that she had no friendship or direct contact with Raziya. Therefore, according to the accused, Raziya had no reason to disclose to this stranger Jafirnissa about her pregnancy. Advocate for the Accused also urged that if Raziya was residing with her sisters, brother and mother, there was no explanation why Raziya did not told any of them about her pregnancy.

34. We do not find any force in the submissions.

Hirabai was residing along with Raziya, therefore, there is nothing unnatural if Raziya told about her pregnancy to Hirabai. Jafirnissa is residing in Rashid Compound and merely because they were not from the same village or that there was no friendship, there was no reason for Raziya not to repose confidence in Jafirnussa. Raziya may have other reasons not to disclose this fact to her mother and her sisters who were her step sisters. Further, both these witnesses Hirabai and Jafarnissa had nothing to gain by making statement against the accused and in favour of the prosecution. Hirabai is a casual labourer and Jafarnissa is a family woman.

35. Evidence of therefore these two witnesses Hirabai and Jafarnissa proves the case of the prosecution that Raziya was pregnant by the accused and that the accused had promised Raziya that he would marry her.

36. In her evidence P. W. 10 mother of Raziya has stated that Raziya was living with Hirabai and Hirabai told her that Raziya was living with the accused and she was pregnant. Hirabai also saw

Raziya vomitting. Further, from the evidence of P.W. 10 it is clear that for 15 days before the disappearance of Raziya she was in Karnataka. As rightly argued by the learned APP, the pregnancy of Raziya by that time would be one and half month and she would miss one menses only. Therefore, it might be that Raziya was not certain when P.W. 10 was there that she was pregnant. It may be that after Raziya missed 2 menses periods, she realised that she was pregnant and then she disclosed this fact to Hirabai P.W. 7 and Jafirnissa P.W. 4. Therefore, non disclosure of the fact of pregnancy by Raziya to her mother and its disclosure to Hirabai P.W. 7 and Jafirnissa P.W. 4, cannot be said to be unnatural in the circumstances.

37. By this evidence of Hirabai P.W. 7 and Jafirnissa P.W. 4 and Khajat Hussain P.W. 10 the mother of Raziya, prosecution case is brought to the point of motive that the accused being a married man did not want to marry Raziya and therefore he decided to finish her.

38. The crucial question is whether it was the accused who killed her. In order to prove this

fact, the prosecution has relied upon the discoveries made at the instance of the accused. We had also mentioned about certain discoveries made by the Investigating Agency before P.W. 10 lodged report on 26.3.1999 after she came from her native place and after she identified body of Raziya from the block spot on the right leg thumb.

39. P.W. 4 Jafarnissa has also stated on oath that the head was taken out from the gutter behind the Aziza Terrace by the municipal men, she identified the head to be that of Raziya. The fact of taking out head took place according to the prosecution on 26.3.1999 itself. Panchnama in this regard is Exhibit 40 and panch witness Mehrunissa (P.W. 3) has proved this panchnama. She has stated that she was called by Mumbra Police on 26.3.1999 for holding panchnama. Accused was there along with police staff. He made a disclosure statement which was reduced into writing at Exhibit 38. Then accused led the party to Rashid Compound, there was a drainage vehicle of the Municipality. Vehicle was halted at Naka, accused took them to the chamber of septic tank at Aziza Terrace (Aziza Terrace is the name of the building and that has nothing to do with

the terrace of Aziza Building), accused pointed out the middle chamber with the help of scavengers, the chamber was opened and in the fourth bucket the head portion came. It was a female head with ear and nose ring. In another bucket the waist portion and bunch of hair came out. These articles were seized under Exhibit 39. Separate panchnama of the body parts was made at Exhibit 40.

40. This witness was subjected to cross examination, but nothing fruitful has been brought out in the cross examination. She admitted that septic tank in Aziza Terrace is accessible to all. Not a single question was asked to her about the statement made by the accused to the police as stated above or his pointing the place i.e. the septic tank etc. Mr. Makasare, however urged that this witness was concerned with some woman organization and therefore she had supported the press case of the prosecution but that does not make any difference, in our opinion. In the cross examination nothing is brought out to show that the witness had any bias against the accused or have any reasons to favour the prosecution.

41. Mr. Makasare, compared the evidence of this witness with that of Jafirnissa because Jafirnissa in her evidence has stated that the head portion was taken out from the drainage and this witness states that they were taken out from the chamber of the septic tank. Then this witness P.W. 3 Mehrunissa has stated that head portion and waist portion were taken out by using buckets. Whereas the witness from the municipality has stated that he took them out by hand. These variations are not at all sufficient to create doubt about the veracity of the three witnesses. Referring to the septic tank as drainage by Jafirnissa, cannot be said to be a strong enough to change the place of recovery. Chamber of a septic tank is a word known to people who are somewhat educated but drainage is a common word which appears to have been used by Mehrunissa. Further, admittedly, there were thousands of persons present when the septic tank was being searched and human body was found in the presence of the accused, and, therefore, use of hand, use of bucket or use of buckets being stated by different witnesses, does not make any difference at all, because all the three witnesses including evidence of P.W. 5 Ramlal, are constant in their statement that from

the septic tank behind Aziza Terrace at the instance of the accused, search was made and head and waist portion of human body was found, head being that of Raziya. Therefore, when all the three important witnesses on this discovery are consistent, minor variations do not make any difference at all. This witness P.W. 5 Ramlal he was working as a sweeper in Thane Corporation and he has stated that the septic tank was opened hair, head, nosal ornaments, waist portion of the body was taken out and it was taken out physically by him "taking out physically does not necessarily mean that he entered the drainage and took out the aforesaid parts by his own hands." Physically also means personally. In any case when all the three witnesses are consistent about the presence of the accused and the place from which the parts were recovered and about the time also, then no fault can be found with the prosecution case because of the aforesaid little or minor variations.

42. At this juncture, it is necessary to co-relate the discovery made prior to the lodging of complaint by P.W. 10 on 26.3.1999. This discovery is discussed by us in earlier paragraphs as of the

flesh which was causing obstruction in the drainage and the panchnama of which came to be executed as upon admission being given by the accused. This discovery of the flesh causing obstruction to the drainage of the building Aziza Terrace to all the flats situate under one another i.e. flat Nos. 101, 201, 301 and 401 on 20.3.1999 are the important pieces of evidence relied upon by the prosecution to show that accused after committing murder of Raziya threw some parts of the flesh of her body in the drainage from the toilet of his room No.401 which caused obstruction to the drainage on all the floors flats situated below 401 and has also threw head and waist portion in the septic tank of his own building.

43. Other important evidence coming from the prosecution is search of room No.401 in presence of wintess Mehrunissa P.W. 3. In her evidence she has stated that after discovery of head and part of body was made and panchnama was prepared then the accused offered to show the place of offence. Memorandum was prepared at Exhibit 41. It was signed by all. Then the accused brought two keys from his house and took the police party to room No. 401 at Aziza

Terrace. Accused opened the lock of grill and then opened the door lock. They entered the room it was having two rooms and kitchen.

44. During the inspection of this room No. 401, they found blood stains on two ladis/tiles. Those stains were lifted. In the bedroom blood stains were found at 4/5 places on the wall. Sample of blood mixed with the plaster was collected. Two hairpins of Raziya were found near the cot and on ladi. In the toilet there was a kharata or broom upon which pieces of flesh and hair were attached, there was a blood spot on the tiles, that was also lifted. There was a long black hair in the toilet at different places, they were also taken and all these articles were seized under panchnama Exhibit 42. She identified all the aforesaid documents bearing her signature right from Exhibits 38 to 42 and also identified all the articles shown to her. About that part of her evidence, there is absolutely no cross-examination. Not a single question is asked to her about her presence in the house and the search and recovery made in the house. Panchnama Exhibit 42 is a detailed panchnama giving all the particulars of the incriminating things found in the

house of the accused bearing room No. 401. Panchnama also mentions that wall in the bedroom was found to have been scratched or rubbed (obviously to wipe out the blood stains) at 4- 5 places scrappinngs were there.

45. All these articles i.e. blood samples lifted from ladis, blood samples recovered by scratching the wall, hair, broom, hairpins and the long hair were all sent to the Chemical Analyser for chemical examination. Report of the C.A. in this regard is at Exhibit 60. In all 20 items were sent to the C.A. they included the clothes of the deceased recovered from the field, as stated above, the gunny bag in which the flesh was carried, the weapon and the clothes of the accused. Item Nos. 7 to 17 in Exhibit 60 are all incriminating articles recovered from the flat No. 401 of accused, as stated above, they are tile, broom, hair, earth or sand, hairpins, scrapings etc. As per report of the C.A. Articles 7, 8, 9, 10, 11, 12, 15, and 17 18 are stained with blood. On Article No. 7 tile wrapped in paper there was a human blood. So far as Article Nos. 8, 9, 10, 11, 12, 15 and 17 are concerned it was disintegrated and therefore

unsuitable for deciding whether it was a human blood or not. On broom Article no. 9 no tissue matter was found and hair Articles 10 and 11 found on two different places in the flat of the accused found to be similar to hair in Exhibit 1 of FSL M.L. Case No. B-1150/99. On the clothes of the deceased Saree, petticoat, blouse, nicker and brassier etc. Article Nos. 1 to 5 in Exhibit 60 human blood is detected but grouping could not be done.

46. About these recoveries or discoveries at the instance of the accused as testified by Mehrunissa P.W. 3, Mr. Makasare contended that the discoveries were most unnatural because according to him if at all accused wanted to make certain disclosures, he would make them at one and the same time and not make them one after the other i.e. making one statement leading the police to the spot making discovery and then making another statement.

47. We do not find anything unnatural in this mode. It was for the accused to make statement of discovery. He could not have been compelled to disclose anything to the police and therefore if the accused made statements leading to discoveries one

after the other, in the manner stated above, then nothing wrong can be found in the same nor there is any illegality in recording the memorandum in this manner.

48. Another important piece of evidence tendered by the prosecution is discovery of weapon at the instance of the accused. Prosecution examined Mohd. Shaikh Mohd. Akhtar P.W. 2 to prove these discoveries. He has stated that on 27.3.1999 he was called in the police station for drawing the panchnama. Another panch, two officers and two policemen were present. Accused gave information that the Sattur i.e. the weapon used was kept with one Tajuddin. His statement was recorded at Exhibit 31 and duly signed by the panchas and the police officers. Then the accused led the raiding party to the said room i.e. Santosh Building. The door bell was pressed. One person by name Tajuddin opened the door. Accused asked the said Tajuddin to produce Sattur which was given by him and accordingly Tajuddin produced the Sattur from the group of knives kept under the cot. Then this sattur was seized and sealed under the signature of the panchas and panchnama was made at Exhibit 32. The witness

identified sattur when shown to him vide Article 28. This sattur or chopper was sent to C.A. As per C.A. Report Exhibit 60 it was item No. 18. Blood was detected on item No.18 but it could not be ascertained whether it is human blood nor grouping could be made.

49. Thereafter the accused said that he would point out the place where bones etc. were dropped in the well. Then panchnama was prepared at Exhibit 33, proved properly. Then the police party went to well along with the accused and as pointed out by the accused but nothing incriminating was found and panchnama Exhibit 34 was prepared.

50. Thereafter, accused disclosed that he will recover his own garments from his house. Third panchnama was prepared at Exhibit 35. He has given the details of his garments in Exhibit 35. Then accused led the party to his house near the mosque. A women opened the door. She was the wife of the accused as disclosed by her. Then the accused took out a banian and lungi, Articles 29 and 30. Both were seized under Exhibit 36.

51. In the cross examination this witness admitted that instrument like Sattur is with many of the persons residing in the building. There is nothing apart from this in the cross-examination at all to create doubt about this discoveries. Mr. Makasare regarding these discoveries contended that if recoveries are made at the instance of the accused under Section 27 of Evidence Act, but the signature of the accused is not obtained on the discovery memorandum or seizure memo then that document cannot be used against the accused. He relied upon the judgment of the Supreme Court reported in **AIR 1995 Supreme Court 2345 Jackaran Singh vs. State of Punjab**. It is clear from the aforesaid judgment that the Supreme Court has expressed serious doubt about the veracity of the entire case. P.W. 4 Surinder Kumar whose evidence was considered and discussed in paragraph 6 was found to have given up total go-bye to the story given in the FIR - Exhibit 56. In the FIR he has stated that three persons had muffled their faces but in the evidence he states that he could identify two of the assailants who came out behind the tree along with another person. Then in the FIR it is stated that each of the three persons fired one shot

each at his brother. But in the evidence he stated that Jackaran Singh fired three shots from his revolver. Therefore, it was found that there were material variations in the story given in the FIR before the court. The court found that he has made material improvement, has exaggerated the prosecution case and therefore his testimony became doubtful. The Supreme Court also found that there was no necessity of identification parade if he was already knowing the assailants.

52. Thereafter, in paragraph 8, the Court has considered the evidence of recovery under Section 27. That evidence was also discarded by the Supreme Court on two grounds. Firstly, the evidence did not inspire confidence because none of the panch witnesses were examined in the trial and secondly the disclosure statement did not bear the signature or thumb impression of the accused. These two were not only the reasons to discard the evidence of discovery but the court found that prosecution had not come up with truth regarding the date of arrest of the accused and the date of disclosure statement, and, it is in this background and context that the Court held that :

> **"The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement."**

The Judgment of the Supreme Court or view of the Supreme Court, as stated above, according to Mr. Makasare was relied upon by the Division Bench of this Court in the judgment reported in **2002 ALL MR (Cri) 305 Haribhau Ganpati Bhalerao vs. State of Maharashtra.** In that case i.e. the Appeal filed by the accused against his conviction for an offence of murder, this court as per paragraph 10 classified the case against the appellant under two heads, namely (a) The ocular account furnished by Syed Habib, P.W. 2, and Sapna Bhalerao, P.W. 5 and (b) the evidence pertaining to recovery of the knife.

53. The circumstance (b) was considered first by the Division Bench in paragraph 11 of its judgment and this evidence of discovery was not relied upon by the Division Bench by following the judgment of the Supreme Court in Jackaran Singh’s case. However, the court accepted the ocular evidence and maintained the conviction.

54. Mr. Makasare, therefore, contended that signature of the accused is not taken on disclosure memos or on the seizure memos, therefore, the evidence of discovery cannot be accepted at all.

55. Mr. Makasare also contended on the basis of evidence of P.W. 2 Mohd. Shaikh that if the accused makes a statement under Section 27 of the Evidence Act, he has to state that he has concealed weapon and that he is going to recover it. According to Advocate for the accused unless these two words are used by the accused in the statement recovery under Section 27 cannot be held admissible. We do not find any substance in the submissions. Section 27 of the Evidence Act, reads as under:

> **"How much of information received from accused may be proved.-** Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

Section 27 nowhere makes any reference to the words "concealment" or "concealing".

56. In our considered opinion even though the Division Bench of this court in Haribhau's case, as stated above, has rejected discovery memorandum and recovery memo because of the absence of the signature of the accused simplicitor, we would like to better rely upon the judgment of the Supreme Court, referred to above, of Jackaran Singh's case. From the facts stated of that case it is clear that the evidence of discovery was rejected by the court for specific reasons. Firstly, two panchas of Exhibit 9 were not at all examined. Secondly, the case of the prosecution about the date of arrest of the accused and the date of disclosure statement was confusing. In that case Supreme Court has noted the following argument of the defence:

> **" According to the defence version the appellant had been arrested during the night intervening 15-16 June, 1984 and not on 23rd June, 1984, as alleged by the prosecution. The statement of P.W. 4, Surinder Kumar to the effect that "I had seen the accused in the police station for the first time 13-14 days of the occurrence" probabilies the defence version. The prosecution case, that the appellant was arrested on 23-6-1984 and led to the discovery of the revolver and the cartridges pursuant to the disclosure statement, therefore, becomes suspect. We are unable to place any reliance upon the alleged discovery statement and recovery of**

the revolver...."

It will be clear that apart from the lacuna in the prosecution case in not obtaining the signatures of the accused on the memorandum and seizure memo found two lacunae in the prosecution case, namely, not examining any of the panch witnesses and not finding the case of the prosecution about the date of the arrest of the accused and the date of discovery memo, genuine. Therefore, it is clear that the evidence of disclosure was not rejected by the Supreme Court only on the ground that the signature of the accused on discovery memo and seizure memo were not obtained. If we see the present case, the prosecution has examined panchas to prove all these seizure memos.

57. P.W. 2 Mohd. Shaikh Mohd. Akhtar as stated above has proved Exhibits 31 to 36. He is cross-examined by the accused but there is not a single answer in the cross examination which creates doubt about the truth and veracity of this witness. No motives are attributed to him and the defence is not at all successful in discrediting the evidence. There is not even a suggestion that he was habitual

witness of the police or is under the influence of the police or has supported the prosecution for some motives or gains. Since his cross examination is very short, we are producing the same as under :

> **"I simply watched the process of panchnama and did not dictate the contents. I do not know Marathi. (The witness does not understand Marathi in which he was question, one question was about the contents of memorandum). I do not say the signature of mine on the label or the instrument Sattur, article No. 28. Rashid compound is the area where Muslims reside. Such instruments were found with many of the people residing there. The panchnamas were not made under my instructions. It is not correct to say that I signed the panchnamas and memorandum only at different places, and the accused did not disclose these."**

58. Next witness is P.W. 3 Mehrunissa Umar Saiyad. She is a woman and has fully supported the prosecution as discussed by us above. In her cross examination also nothing is brought about to create doubt or suspicion about this witness. No motives are attributed to her. Then there are no contradictions at all between her version and what was there in all the documents proved by her from Exhibits 38 to 42. We are reproducing cross-examination of this witness also:

> **"The witness does not understand Marathi she says that she cannot speak, I can speak**

Marathi but cannot write. I can understand the documents if read out to me. The witness was tested for understanding Marathi and the witness has translated Marathi in Hindi language. The panchnamas and paper were not written under my instructions. I do not have any job. One Hawaldar had come to call me. He said that all the women were called by the police. There was no male person at that time. I did not ask the Hawaldar, why we were called and the time. My husband is electrician, my children go to school. All the writings were made in the mob of thousands. People went to Aziza terrace in these numbers. The sephtic tank in Aziza terrace, is accessible for all. I went to the police stan. around 4-00 or 4-30 P.M. I returned home after finishing the above work by 8-30 or 9-00 P.M. Hair and hairpins are available in every house. There was a lot of rush of people when the pieces of the dead body were recovered near the Aziza Terrace. Thousands of people were there. Panchnama was made on the spot there only. The policemen did the job of panchnamas. I signed on it. All the packets were sealed and my signature was taken, at one time. It is not correct to say that accused did not given the information and recovery was made."

59. Moreover, all these discoveries and memorandums of seizures are supported by the Investigating Officer Janardan Garje - P.W. 11. Only one suggestion was given to him in respect of witness Mehrunissa - P.W. 3 that she was active member of Ashtha Organisation but that was denied. The object of giving the suggestion was to show that Ashtha Organisation was there only to protect women right and therefore it was in a zeal or enthusiasm

that she has come forward as a witness. It is pertinent to note that no such suggestion is given to the witness P.W. 3 Mehrunissa herself. Therefore, so far as evidence of discoveries led by the prosecution from witness P.W. 2 and P.W. 3 is concerned, there is absolutely no suspicious circumstances. The witnesses have given the truthful version. Defence has not been able at all to dislodge the witnesses from their testimony in the examination in chief. Discoveries and seizures are proved in addition by the corroborating evidence of Investigating Officer P.W. 11, as stated above and, therefore, in our opinion, not obtaining the signature of the accused or his thumb impression on discoveries memo will not be of any help to the accused.

60. Out of all the panchanamas and discovery memos brought on record, Exhibits 33 and 34 are of no benefit to the prosecution because even though vide Ex. 33 accused told that he threw bones and flesh and parts of body of Raziya in the well, nothing was discovered in the well. Similarly, statement Ex. 35 about the clothes put on by the accused at the time of offence and consequent

recovery of clothes under Ex. 36 viz. one lungi and one banian, is of no use to the prosecution because no blood stains are noted on these two clothes when they were recovered.

61. Panchnama Ex. 54 is about seizure of an agreement from the wife of the accused about flat no. 401 only.

62. We have already discussed above the evidence of C.A. and noted the incriminating pieces of evidence in that regard which are disclosed in C.A. report Exhibit 60. There is one more report of the C.A. Exhibit 61. It was in respect of the examination of bones and the opinion of the C.A. is that bones sent in Box 1 and 2 belong to human being a female and in paragraph 2 C.A. has noted "Sharp cutting object coming forcibly in contact with vertebra sharp cutting from right to left on Thoracic 5 to Thoracic 10 vertebra and Horizontal cut on lumber vertebra". The C.A. has also further opined injury marks can be antemortem or post-mortem and if they are antimortum they are sufficient to cause death.

63. At this juncture, it is necessary to consider the other submissions made by Mr. Makasare. Firstly, according to him even if some flesh and portions of human body were found in the field and some flesh was found in the drainage, as stated above, there is no evidence or opinion that it was a human flesh. It is true that even though from the documents produced on record, it appears that these flesh and parts of human body were sent to the C.A. for opinion, the prosecution has not tendered any evidence of opinion in that regard of the expert. However, so far as the recovery of parts of human body from the field as per the admitted document, Exhibit 18 is concerned, it is specifically mentioned at Sr. No.4 that police found human leg from below the knee with right leg and there was a black spot on the thumb of the right leg. It was this part from which P.W. 10 mother of Raziya identified that it was a leg of her daughter Raziya. Therefore, this document Exhibit 18 which is admitted document of the recovery of the human parts clearly shows that parts of human body and the evidence of P.W. 10, as stated above, shows that right leg was of Raziya. Therefore, absence of opinion of the C.A. would not make much difference

in this case.

64. Mr. Makasare also tried to contend on the basis of the C.A. report Exhibit 61, wherein Dr. R. D. Shah has given his opinion at Sr. No.2 as " Sharp cutting object coming forcibly in contact with vertebra sharp cutting from right to light on Thoracic 5 to Thoracic 10 vertebra and Horizontal cut on lumber vertebra. Injuries can be antemortum or post-mortem. If anti-mortem, it is sufficient to cause death. Mr. Makasare contended that if the doctor is not certain whether the injury marks were post-mortem or anti mortem, then no conclusion could be drawn that injuries were anti-mortem. This argument is absolutely irrelevant, in the sense, that head of Raziya and her waist and other parts of body are found. Admittedly, head cannot be severed unless the body is cut to pieces. Raziya’s body was cut to pieces and the overwhelming evidence, that has come on record clearly shows that it was done in the house of the accused. It is nowhere defence of the accused that while in his home Raziya died a natural death and then he cut her to pieces. No accused would raise such a defence because he would have been required to give lot of explanation about

his conduct and it is not the defence raised by the accused, and for the reasons and circumstances discussed above absence of no opinion of the doctor whether the injuries were post mortem or anti mortem cannot help the accused. The opinion given at Exhibit 61 is that the bones sent to the doctor were female bones, she was above 18 years of age and all that tallies with the entire case of the prosecution.

65. Mr. Makasare also contended that there is no evidence of last seen together i.e. nobody in the building saw deceased Raziya going to the house of the accused on that night or on that day. He also contended that no one residing in the building is examined, there is no evidence how the accused carried the dead body or different parts of her body from his house on the 4th floor to different fields or to the septic tank on the ground floor.

66. May be that no such evidence is there but that will not affect at all whatever has been proved and brought on record by the prosecution. Two persons residing in the vicinity / building have been examined Hirabai and Jafirnissa. The finding

of the flush and parts of the body obstructing drainage of all the rooms one over the other right from the ground floor to the 4th floor immediately on the next date of the incident coupled with all the other recovery of flush, head, waist portion etc. clearly shows that the murder has been committed in Room No. 401 in possession of the accused.

67. Mr. Makasare also contended that the trial court while examining the accused under Section 313, did not put clear cut simple questions but put composite questions making it difficult for accused to understand and explain. He drew our attention to question Nos. 2, 4, 5 and 10, the same are reproduced hereunder:

> **Q. 2 The prosecution evidence shows that Raziya was working with you as a part time domestic servant between 14th and 18th of March, 1999, what have you to say?**
>
> **Ans. She was not working as a domestic servant.**
>
> **Q. 4 Raziya was missing from the place she was residing and also working to earn her livelihood and that portions of the body and bones of hers' were found in the field of P.W. 8 Chaudhari sometime on the 18th of March, 1999. What do you say?**

Ans. I do not know anything about this.

Q. 5 The evidence further shows that on interrogation you discovered and offered to recover the portions of the dead body, that is, head, waist portion and hairs in the septic tank located in or around Aziza terrace in Rashid Compound and the said portions were recovered and seized through memorandums Exhs. 38, 39 and 40. What do you say?

Ans. It is not true. I did not discover about the portions.

Q. 10 What have to say about the garments articles 8, 9, 10, 11, 12 and 13 seized and shown to the witness P.W. 1 suit?

Ans. I do not know anything about garments.

We do not find that these are composite questions. They are simple questions and no prejudice is caused to the accused and out of 13 questions put to the accused, accused gave positive reply to question Nos. 1 and 2 only and he has denied every other question. Even when last questioned where he was asked to say anything in his defence, he only said that accusation is false and he has nothing to explain. From this it will be clear that the accused understood the case of the prosecution properly. No prejudice was caused to him by putting questions in the aforesaid manner.

68. Mr. Makasare further contended that the clothes of the accused did not have blood stains upon them, that is, also not of much significance because the incident is between the period from 14.3.1999 to 18.3.1999 and the accused came to be arrested on 26.3.1999.

69. Mr. Makasare next contended that prosecution has proved recovery of Sattur at the instance of the accused but what is sent to the C.A. is chopper. We do not find that it makes any difference. One weapon can be referred to by two different persons in different words.

70. Mr. Makasare tried to urge that deceased Raziya could have been killed by his own relatives because she was pregnant before marriage. It is a far fetched argument not fitting anywhere in the prosecution case.

71. For all the reasons stated above, it is a clear cut case of murder by the accused and attempt to destroy the evidence. The trial court has considered all the aspects of the case. There is no illegality in the order of the trial court.

Evidence produced and proved by the prosecution proves beyond doubt the guilt of the accused, and, therefore this Appeal is required to be dismissed. Appeal is dismissed. Conviction and sentence is maintained. Office to communicate this order to the appellant-accused in jail, immediately.

(D.G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)